

May 28, 2004

**THIS IS NOT AN OFFICIAL STATEMENT OF
THE COURT, BUT IS INTENDED SOLELY
FOR THE CONVENIENCE OF THE PRESS**

FOR IMMEDIATE RELEASE

**IN THE SUPREME COURT OF THE STATE OF IDAHO
2004 Opinion No. 71**

KATHERINE M. MILLER, a single woman,)	
)	
Plaintiff-Appellant,)	
)	
v.)	Docket No. 28537
)	
RITA SIMONSON, a single woman; and)	
JUDY C. SIMONSON, a single woman,)	
)	
Defendants-Respondents.)	

Appeal from the District Court of the Seventh Judicial District of the State of Idaho,
Teton County. Hon. Brent J. Moss, District Judge.

Order of the district court on summary judgment determining that improperly recorded
Covenants, Conditions and Restrictions are nevertheless binding on purchaser; Affirmed.

Hawley Troxell Ennis & Hawley LLP, Boise, for appellant. Lynnette M. Davis argued.

Rigby Thatcher Andrus Rigby Kam & Moeller, Chartered, Rexburg, for respondents.
Gregory W. Moeller argued.

In a unanimous decision the Idaho Supreme Court upheld a district court's decision finding that a party who records Covenants, Conditions and Restrictions (CC&Rs) on a piece of land with a county recorder establishes constructive notice of that instrument to all subsequent purchasers despite the fact that the county recorded the instrument improperly.

In 1990 the Simonsons acquired real property in Teton County that they then platted into a subdivision. The Simonsons submitted CC&Rs for this subdivision for recording with the Teton County officials but the CC&Rs were improperly indexed. Subsequently, Miller purchased one of the subdivided portions of the Simonson subdivision and proceeded to construct a building and fences in violation of the CC&Rs. When the Simonsons discovered these structures they instructed Miller that they were in violation of the CC&Rs and requested that she remove them. Miller claims that she had no knowledge of the CC&Rs and that because

they were improperly recorded in the county records it was impossible for her to know about them. Miller then brought this action seeking a declaratory judgment that she was not required to abide by the CC&Rs because she had no knowledge of them.

The Supreme Court found that two early Idaho cases are still controlling and that the Idaho recording statute plainly establishes that once an instrument has been acknowledged, certified, and submitted for recording it provides constructive notice to all subsequent purchasers regardless of whether that instrument is properly indexed by the county recording officials.